

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHRISTOPHER JACKSON,

Petitioner,

-v-

R. ERCOLE, Superintendent, Green Haven
Correctional Facility,

Respondent.

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Case No. 07-CV-457 (KMK)

ORDER ADOPTING REPORT AND
RECOMMENDATION

KENNETH M. KARAS, District Judge:

On December 23, 2010, Magistrate Judge Davison entered a Report & Recommendation ("R&R") recommending that this Court dismiss Petitioner's habeas corpus Petition. (R&R 30 (Dkt. No. 22).) In the R&R, Magistrate Judge Davison provides notice that objections to his conclusions were due within seventeen days, and that failure to object would constitute a waiver of Petitioner's right to appeal. (*Id.*) No objections have been filed.

When no objections are filed, the Court reviews an R&R on a dispositive motion for clear error. *See Eisenberg v. New England Motor Freight, Inc.*, 564 F. Supp. 2d 224, 226 (S.D.N.Y. 2008). The Court has reviewed the R&R and finds no error, clear or otherwise.¹ The Court therefore adopts the R&R in its entirety, and it is hereby


ORDERED that the Petition is DISMISSED. The Clerk of the Court is respectfully requested to close this case.

Because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253(c)(2); *Lucidore v. N.Y. State Div. of Parole*, 209 F.3d 107, 111-12 (2d Cir. 2000). In addition, the Court certifies,

¹ In addition to what Magistrate Judge Davison noted about Petitioner's insufficiency claim, the Court notes that there is ample authority that the jury's conviction of Petitioner on the two counts of attempted murder in the first degree and one count of reckless endangerment were sufficiently supported by the evidence, even though Petitioner was acquitted of weapons possession. Simply put, because weapons possession was not an element of those offenses, Petitioner's acquittal on that charge is of no moment. *See Weathers v. Conway*, No. 05-CV-139, 2007 WL 2344858, at *13 (W.D.N.Y. Aug. 15, 2007) ("New York courts have declined to find that a verdict is inconsistent or repugnant where the acquitted crime contains an element not found in the convicted crime.").

pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962).

DATED: White Plains, New York
January 30, 2012


KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE